

S.B. CRIMINAL REVISION PETITION NO. 1338/2007
Bhanwar Lal Vs. State of Rajasthan

DATE OF ORDER : 6.12.2007

HON'BLE MR. GOVIND MATHUR, J.

Mr. Shambhoo Singh, for the petitioner.
Mr. O.P. Rathi, Public Prosecutor.

By the judgment dated 26.9.2007 learned Judicial Magistrate, Pratapgarh convicted the appellant for the offence under Section 16 read-with Section 54 and 54(c) of the Rajasthan Excise Act and sentenced to undergo six months simple imprisonment with fine of Rs.200/- and in default, to further undergo simple imprisonment for four days. An appeal preferred by the petitioner before the learned Sessions Judge, Pratapgarh was barred by limitation, thus, alongwith the memo of appeal an application under Section 5 of the Limitation Act was also filed. Learned Sessions Judge, Pratapgarh by the order impugned dated 29.11.2007, dismissed the application preferred under Section 5 of the Limitation Act and thus also rejected the appeal. Being aggrieved by the same this revision petition is preferred.

I have examined the order passed by the trial court as well as by the appellate court. The petitioner faced trial for the offences under Section 16/54 and 54(c) of the Rajasthan Excise Act for a period of about 10 years and he was sentenced for the term of six months with fine. The appellant is a member of tribe community and is coming from lower echelon of society. The appellate court while considering the application preferred by the petitioner for condonation of delay in filing

the appeal should have taken a lenient view looking to poor condition and illiteracy of the petitioner-appellant.

Be that as it may be, instead of setting aside the order passed by the learned Sessions Judge and to remand the matter for adjudication on merits, I consider it appropriate to examine the quantum of sentence awarded as learned counsel for the petitioner also emphasis that a substantial part of sentence has already been undergone by the petitioner. It is not in dispute that a very small quantity of liquor was recovered from the petitioner and he was facing trial since 1997, he is a member of tribe community and was found guilty for having country-liquor made by *Mahua*, thus, in totality of the facts and circumstances of the case it shall be appropriate to dispose of this revision petition by modifying the sentence awarded to the petitioner for the term already undergone by petitioner.

Accordingly, while maintaining the conviction the penalty of the sentence already undergone by the petitioner accused is imposed and let the revision petitioner be enlarged.

(GOVIND MATHUR),J.

J.G.